IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HAROLD TRAVIS LYONS,

Petitioner,

vs.

WARDEN, NEVADA STATE PRISON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF NEVADA

JOHN J. MOMOT
520 South Fourth, Suite 300
Las Vegas, Nevada 89101
(702) 385-7170
Attorney for Petitioner

CLB PUBLISHERS & LITHOGRAPHERS, INC. • (301) 933-5220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HAROLD TRAVIS LYONS,

Petitioner,

vs.

WARDEN, NEVADA STATE PRISON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF NEVADA

QUESTIONS PRESENTED FOR REVIEW

1. Were Lyons' pleas of guilty rendered involuntary by virtue of ineffective assistance of counsel.

2. Was Lyons denied due process and his pleas of guilty rendered involuntary by virtue of the State's filing of a supplemental information charging him with being an habitual criminal three days before his trial was scheduled to begin.

TABLE OF CONTENTS

CITATIONS

OPINIONS BELOW

The opinion of the Nevada Supreme Court is reported at 100 Nev.Ad.Op. 90 and _____ P.2d _____ (1984) (App. A, *infra*, pp. 1a-3a).

The trial court's order making the writ of habeas corpus for post conviction relief permanent, dated July 7, 1983 (App. B, *infra*, pp. 4a-5a) was not published.

JURISDICTION

The decision of the Nevada Supreme Court which is sought to be reviewed was filed with the Clerk of the Nevada Supreme Court on July 3, 1984.

The order of the Nevada Supreme Court denying Lyons' request for a rehearing was filed with the Clerk of the Nevada Supreme Court on August 27, 1984.

Nevada Supreme Court Justice Springer's order staying the issuance of the remittitur from the Nevada Supreme Court for a period of 30 days was filed with the Clerk of the Nevada Supreme Court on September 20, 1984.

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1. Were Lyons' pleas of guilty rendered involuntary by virtue of ineffective assistance of counsel.

2. Was Lyons denied due process and his pleas of guilty rendered involuntary by virtue of the State's filing of a supplemental information charging him with being an habitual

criminal three days before his trial was scheduled to begin.

CONSTITUTIONAL PROVISIONS AND STATUTES

1. The Fourth Amendment to the United States Constitution provides:

> *Unreasonable searches and seizures.* The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. The Fifth Amendment to the United States Constitution provides, in pertinent part:

> . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . .

3. The Sixth Amendment to the United States Constitution provides:

> *Rights of accused in criminal prosecutions.* In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

4. The Seventh Amendment to the United States Constitution provides:

> *Trial by jury in civil cases.* In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

5. The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

6. Nevada Revised Statute 207.010. (App. C, *infra*, p. 6a).

7. Nevada Revised Statute 465.080. (App. D, *infra*, p 7a).

8. Nevada Revised Statute 465.101. (App. E, *infra*, p. 8a).

STATEMENT OF THE CASE

Status

Lyons is petitioning this Court for a writ of certiorari to review the decision of the Nevada Supreme Court reversing the trial court's decision granting his post conviction petition for writ of habeas corpus.

On December 1, 1980, Lyons plead *nolo contendere* to one count of slot cheating under NRS 465.080(2)(b) and one count of attempted slot cheating in the case styled *State of Nevada v. Harold Travis Lyons and Dawn Elise Cobeen*, No. C79-1480 (hereinafter referred to as the "MGM Hotel case"). On March 2, 1982, Lyons plead *nolo contendere* to one count of possession of a slot machine cheating device under NRS 465.080(3)(a) in the case styled *State of Nevada*

v. Harold Travis Lyons, No. C82-0334 (hereinafter referred to as the "Sahara Hotel case").

On June 6, 1982, Lyons filed a post conviction petition for writ of habeas corpus in the Eighth Judicial District Court of the State of Nevada. (ROA, pp. 1-37). Lyons was incarcerated in the Nevada State Prison at the time. In his petition, Lyons sought to vacate his pleas of guilty in the MGM and Sahara Hotel cases on the grounds that they were involuntarily entered. The trial court ruled in Lyons' favor and permanently granted the writ of habeas corpus.

The State of Nevada appealed the trial court's decision. On July 3, 1984 the Nevada Supreme Court reversed the trial court's decision and reinstated Lyons' pleas of *nolo contendere.*

On August 27, 1984, the Nevada Supreme Court issued its order denying Lyons' petition for rehearing. On September 20, 1984, Nevada Supreme Court Justice Springer stayed the issuance of the remittitur to the trial court for a period of thirty days pending application to this Court for a writ of certiorari.

THE FACTS

Lyons was playing a slot machine in the MGM Grand Hotel and Casino in Reno, Nevada, when he was forcibly detained by private hotel security guards pursuant to the authority of NRS 465.101. He was handcuffed and taken to a room removed from the main casino. Lyons was then interrogated at length by MGM Grand security officer Bill Bailey regarding his alleged cheating activities. During the interrogation, Lyons and Bailey were alone in the room, and Lyons was made to sit with his hands handcuffed behind his

back. Bailey had been employed as a police officer for approximately 30 years.

When Lyons asked Bailey whether he was under arrest, Bailey replied that he was not. Lyons requested that he be allowed to contact an attorney. Bailey denied this request. Lyons told Bailey that he should either arrest him or let him go. Bailey ignored the statement and continued his interrogation.

Some time later, a Nevada state gaming agent arrived and ordered that Lyons be strip searched. Lyons refused and was threatened with physical violence if he did not comply. Based upon this threat, Lyons removed his clothes and Bailey and the agent searched through Lyons' clothing, personal belongings, and wallet. Bailey claims that he found slot cheating devices on Lyons' person.

On September 19, 1979, Lyons was indicted on one count of slot cheating under NRS 465.080(2)(b), and one count of possession of a slot machine cheating device under NRS 465.080(3)(a) in the MGM Hotel case. On July 9, 1980, Lyons retained Kent Robison, Esq., to represent him in that case, and the case was set for trial on December 1, 1980.

On Friday, November 28, 1980, the State filed an information supplemental to the indictment charging Lyons with being an habitual criminal under NRS 207.010. Lyons first learned of the supplemental information on Monday, December 1, 1980, approximately 30 minutes before he was scheduled to appear in court to begin his trial. Robison told Lyons that if he insisted on going to trial and was found guilty, he would be sentenced to life in prison without the possibility of parole. Robison further indicated to Lyons that he had no chance of winning his trial because the State had too much evidence against him. In reliance on these representations, Lyons entered pleas of *nolo contendere* to the charge of slot

cheating contained in Count I of the indictment, and to a charge of attempted slot cheating, a lesser included offense to the charge of possession of a slot cheating device contained in Count II of the indictment. Pursuant to negotiations, the State agreed not to pursue the habitual criminal charge.

On January 22, 1981, Lyons was arrested at the Sahara-Reno Hotel in Reno, Nevada, and charged with one count of possession of a slot cheating device and one count of conspiracy to commit slot cheating. In February of 1982, Chester Kafchinski, Esq., was appointed by the Court to represent Lyons on both the MGM and Sahara Hotel cases, and Robison withdrew as Lyons' counsel in the MGM case. Lyons subsequently entered a plea of *nolo contendere* to a charge of possession of a slot machine cheating device in the Sahara Hotel case as a result of threats by the prosecutor to charge him as an habitual criminal in that case as well.

On June 6, 1982, Lyons filed a proper person post conviction petition for writ of habeas corpus in the Eighth Judicial District Court in the State of Nevada. (ROA, pp. 1-37). In his petition, Lyons raised the issues raised in the instant petition, to wit: that his pleas of *nolo contendere* in both the MGM and Sahara Hotel cases were rendered involuntary by ineffective assistance of counsel. Specifically, he claimed that his pleas were entered in reliance on incomplete and erroneous advice from his attorneys. See *Herring v. Estelle,* 491 F.2d 125, *rehrg denied,* 493 F.2d 664 (5th Cir. 1974). He also alleged that said pleas were rendered involuntary by virtue of the prosecution's last minute filing of the supplemental information charging him with being an habitual criminal.

With regard to the first issue, Lyons charged that his attorneys failed to provide him effective assistance of counsel because they did not file a motion to suppress the evidence

allegedly seized by Bailey during his strip search at the MGM Hotel. Lyons contended in his original petition and subsequent supplemental points and authorities filed with the trial court (ROA, pp. 266, 304, 218-222) that Bailey was acting under color of state law as a *quasi* police officer and thus was required to adhere to the mandates of the Fourth Amendment with regard to searches and seizures. See *People v. Zelinski,* 594 P.2d 1000 (Cal. 1979), and *United States v. Dansberry,* 500 F.Supp. 140 (D.C. Ill. 1980). In supplemental points and authorities filed with the trial court on August 11, 1982, it is stated:

> The Petitioner asserts that his plea was involuntary because it was the product of ineffective assistance of counsel. As stated above, the ineffectiveness is predicated upon the counsel's failure to investigate the Petitioner's case and file motions to suppress illegal [sic] seized evidence.
>
> The claim that trial counsel was ineffective because he failed to pursue Fourth Amendment defenses has been found to be within the parameters of habeas relief. *Moran v. Morris,* 478 F.Supp. 145 (1979).

(ROA, p. 222). Lyons also raised this issue on appeal to the Nevada Supreme Court.

Lyons also contended that the assistance of his attorneys was ineffective on the grounds that he was wrongfully advised to plead guilty to duplicitous offenses in the MGM case. During oral argument before the trial court, Lyons argued that under the facts of his case, the charge contained in Count II of the indictment in the MGM case was a lesser included offense of the charge contained in Count I. (ROA, pp. 314-315). Specifically, Lyons was charged with slot cheating in Count I, and possession of a slot machine cheating device in Count II. Because both charges arose out of the same transaction, Lyons could only have been convicted of one of the

two offenses enumerated.[1] Because Lyons' attorneys failed to realize that he could have been convicted of only one of these offenses, he was wrongfully advised by (1) Robison to plead guilty to two offenses in the MGM case, and (2) Kafchinski not to withdraw said pleas as part of the Sahara Hotel case negotiations.

In its opinion reversing the decision of the trial court making the writ permanent, the Nevada Supreme Court simply stated that the assistance that Lyons' attorneys provided him was not ineffective under either the traditional "farce and sham" or the modern "reasonably effective assistance" standards. The Court also held Robison was not ineffective for failing to file a motion to suppress evidence. The Court did concede, however, that Lyons was entitled to argue that his pleas were rendered involuntary on the grounds that they were the product of ineffective assistance of counsel.

The other issue which is raised in the instant petition is whether Lyons' was denied due process and his pleas of *nolo contendere* rendered involuntary by virtue of the State's last minute filing of the supplemental information charging him with being an habitual criminal. This issue was raised in Lyons' original petition for writ of habeas corpus. (ROA, pp. 25-34). The issue was also addressed in supplemental points and authorities (ROA, pp. 275-280), and before the Nevada Supreme Court. The Nevada Supreme Court held that Lyons was not denied due process and that his pleas of *nolo contendere* were not rendered involuntary by virtue of the State's filing of the habitual criminal allegation three days before trial.

---

[1]Nevada follows the more liberal double jeopardy analysis under *Blockburger v. United States,* 284 U.S. 299 (1932), whereby the factual circumstances of the charges are taken into account in determining what is a lesser included offense. *Owen v. State,* 680 P.2d 593 (Nev. 1984).

REASONS FOR GRANTING THE WRIT

INEFFECTIVE ASSISTANCE OF COUNSEL

The petition for writ of certiorari should be granted with respect to the issue of ineffective assistance of counsel for the following reasons. First, the Nevada Supreme Court's decision is in conflict with the decision of the Eighth Circuit Court of Appeals in *United States v. Easter,* 539 F.2d 663 (8th Cir. 1976), *cert. denied* 434 U.S. 844 (1977), wherein the court held that the failure of defense counsel to file a pretrial motion to suppress evidence constituted ineffective assistance of counsel. Second, the Nevada Supreme Court failed to set forth any reasons in support of its holding that Lyons' counsel failure to file a pretrial motion to suppress in the MGM case and to advise him that the charge contained in Count II of the indictment in that case was a lesser included offense of the charge contained in Count I did not constitute ineffective assistance of counsel. It is submitted that the Court should have at least analyzed Lyons' claim with reference to the five factors enumerated in *United States v. Cronic,* _____ U.S. _____ (1984). Third, review of the Nevada Supreme Court's decision is necessary to avoid a gross miscarriage of justice in this case.

THE HABITUAL CRIMINAL CHARGE

The Court should grant the petition with regard to this issue to reassess its holding in *Bordenkircher v. Hayes,* 434 U.S. 357 (1970). It is submitted that the Court's holding in *Bordenkircher* has sanctioned wide spread prosecutorial abuse in plea bargaining by encouraging prosecutors to file habitual

criminal cases when the severity or staleness of the prior offenses do not warrant such a charge simply to cause defendants to forego their fundamental right to trial by jury. For this reason, it is submitted that the holding of *Bordenkircher* should be re-evaluated, and a limited exception to prosecutorial discretion be created when dealing with unwarranted habitual criminal charges.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the issues presented herein should be resolved by review on a writ of certiorari.

Respectfully submitted,

/s/ JOHN J. MOMOT

520 South Fourth, Suite 300
Las Vegas, Nevada 89101
(702) 385-7170

APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF NEVADA

WARDEN, NEVADA STATE PRISON,
Appellant

vs.

HAROLD TRAVIS LYONS,
Respondent.

No. 15084

July 3, 1984

Appeal from order granting post-conviction petition for writ of habeas corpus, Eighth Judicial District Court, Clark County; Joseph S. Pavlikowski, Judge.

Reversed.

Brian McKay, Attorney General, Carson City, and *Steven B. Wolfson,* Deputy Attorney General, Las Vegas, for Appellant.

John J. Momot, Las Vegas, for Respondent.

OPINION

Per Curiam:

The warden appeals from an order granting a post-conviction petition for writ of habeas corpus. The order declared void *ab initio* pleas of *nolo contendere* entered by respondent in two Washoe County criminal prosecutions. For the reasons set forth below, we reverse the order granting the petition and reinstate the pleas.

On December 1, 1980, respondent pleaded *nolo contendere* to one count each of slot machine and attempted possession of a cheating device, in a case involving events which transpired at the MGM Grand casino. Before sentencing, he was arrested for cheating offenses at the Sahara-Reno. Respondent left the state and was not located and returned until January of 1982. In subsequent proceedings he was sentenced in the MGM matter consistent with the original plea bargain, and was allowed to plead *nolo contendere* to another cheating offense in the Sahara case. He was sentenced to ten years and five years, concurrent, in the former matter, and to a concurrent five years in the latter.

In June of 1982, respondent filed the instant petition for habeas relief, challenging the validity of his pleas in the MGM case.[1] The petition contended that respondent had pleaded without the effective assistance of counsel, and that his pleas had been "coerced" by the "use" of illegally seized evidence and by the filing of an habitual criminal allegation the Friday before trial. In supplemental points and authori-

---

[1]The district court determined that respondent had shown "good cause" why his petition should be entertained notwithstanding his failure to appeal from the judgments of conviction. *See* Junior v. Warden, 91 Nev. 111, 532 P.2d 1037 (1975). The "good cause" finding is not at issue on appeal, and we express no opinion thereon.

ties, respondent raised the additional claim that both his MGM and his Sahara-Reno pleas were invalid under Hanley v. State, 97 Nev. 130, 624 P.2d 1387 (1981). The district court concluded that respondent's pleas were "not properly taken" and granted the habeas petition, declaring the pleas void *ab initio* "for the reasons and on the grounds set forth" in the petition and supplemental points and authorities.

The warden now argues that there was no factual or legal basis for the grant of habeas relief. We agree.

Respondent argued below that his MGM pleas were "coerced" and obtained in violation of due process by the state's filing of an habitual criminal allegation three days before trial. He argues that such a practice is unequivocal evidence of prosecutorial vindictiveness triggered by a defendant's refusal to plead and the concomitant assertion of the constitutional right to a trial. The United States Supreme Court, however, has approved this practice and held that a prosecutor may file an habitual criminal allegation in response to an accused's election not to plead guilty. The Court specifically indicated that absent a decision to file the allegation based on an arbitrary factor such as race, an inference of vindictiveness is not compelling in light of the give-and-take of the plea bargaining process and the prosecutor's power to have filed the allegation at the outset of the plea negotiations. *See* Bordenkircher v. Hayes, 434 U.S. 357 (1978). We have embraced the *Bordenkircher* analysis under facts fairly similar to those of this case. *See* Schmidt v. State, 94 Nev. 665, 584 P.2d 695 (1978). Moreover, respondent gave no indication of any feeling of coercion at the MGM plea canvass, and told the court he was entering his pleas freely and voluntarily and without compulsion. Accordingly, we conclude that the prosecutor's conduct in this case

did not violate respondent's due process rights or result in involuntary pleas.[2]

Respondent also argued below that his MGM pleas were "coerced" by the "use" of illegally seized evidnece. By entering his *nolo* pleas, however, respondent waived all constitutional claims based on events occurring prior to the entry of the pleas, except those involving the voluntariness of the pleas themselves. *See* Cline v. State, 90 Nev. 17, 518 P.2d 159 (1974). Accordingly, his fourth amendment claim was not cognizable on his petition for habeas relief.

Respondent also argued below that his attorney in the MGM proceeding did not provide effective assistance in advising him to forego trial and plead *nolo contendere.* The United States Supreme Court has recently adopted the "reasonably effective assistance" standard for ineffective counsel in criminal cases. This constitutional standard supplants Nevada's traditional "farce and sham" test. *See* Strickland v. Washington, _____ U.S. _____, 52 U.S.L.W. 4565 (May 14, 1984). It is not entirely clear whether the *Strickland* case applies prospectively only, or to cases still pending on direct appeal. In any event, we have examined the various claims of ineffectiveness and have concluded that counsel was not ineffective under either the traditional "farce and sham" or the modern "reasonably effective assistance" standard.[3]

---

[2]In his answering brief, respondent relies on State v. Sather, 564 P.2d 1306 (Mont. 1977), which disapproves of the filing of an habitual criminal allegation under circumstances similar to those of this case. *Sather* relied heavily on Hayes v. Cowan, 547 F.2d 42 (6th Cir. 1976), which was overruled in *Bordenkircher. Sather* is of doubtful validity in the wake of the *Bordenkircher* ruling.

[3]In particular, we note that counsel was not ineffective for failing to file a motion to suppress. Although respondent's substantive fourth amend-

We have considered the argument that the *nolo* pleas violated the rule of Hanley v. State, *supra*, and have found the argument meritless.

Having concluded that the record before us shows no factual or legal basis for the grant of habeas relief, we hereby reverse the order granting the post-conviction petition for writ of habeas corpus, and we hereby reinstate respondent's pleas of *nolo contendere*.

/s/ Manoukian, C.J.
/s/ Springer, J.
/s/ Mowbray, J.
/s/ Steffen, J.
/s/ Gunderson, J.

---

ment claim was not cognizable on his petition for post-conviction habeas, he was entitled to argue, as he did, that counsel was ineffective for failing to seek suppression. We have concluded, however, that not withstanding decisions from other jurisdictions, the motion would have been without merit under federal and Nevada law. *See* Burdeau v. McDowell, 256 U.S. 465 (1921); Radkus v. State, 90 Nev. 406, 528 P.2d 697 (1974).

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HAROLD TRAVIS LYONS, *Petitioner,*	)	
v.	)	No. C58393
THE STATE OF NEVADA, et. al., *Respondents.*	)	

ORDER GRANTING WRIT OF HABEAS CORPUS
FOR POST-CONVICTION RELIEF

This matter having come before this court for a final hearing on June 14, 1983, and the court having considered the evidence and testimony taken hereto along with all the pleadings filed in this cause and the arguments of counsel, does hereby FIND:

That the pleas of guilty entered into by Petitioner in cases number C79-1480 on December 1, 1980 and C82-334 on March 2, 1982 pursuant to plea negotiations, as well as the plea negotiations themselves, are void ab initio for the reasons and on the grounds set forth in the Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities filed with this court on June 9, 1982, as well as all supplemental points and authorities filed by Petitioner subsequent thereto, and all oral argument presented to the court.

Accordingly, the court does hereby ORDER that the Petitioner's application for a Writ of Habeas Corpus for Post-Conviction Relief is granted and hereby made permanent.

It is further ORDERED that counsel for respondents shall

see that Petitioner is transferred to Northern Nevada Correctional Center so that proceedings consistent with this order can be undertaken in Washoe County, Nevada.

DATED this 7 day of July, 1983.

/s/ Joseph S. Pavlikowski

JOSEPH PAVLIKOWSKI
District Judge

HABITUAL CRIMINALS

207.010 Habitual criminals: Definition; punishment; trial of primary offense.

1. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been twice convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been three times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in the state prison for not less than 10 years nor more than 20 years.

2. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been five times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state prison for life with or without possibility of parole. If the penalty fixed by the court is life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

3. Conviction under this section operates only to increase, not to reduce, the sentence otherwise provided by law for the principal crime.

4. It is within the discretion of the district attorney whether or not to include a count under this section in any information, and the trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

5. In proceedings under this section, each previous conviction must be alleged in the accusatory pleading charging the primary offense, but no such conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction be read in the presence of a jury trying the offense.

6. If a defendant charged under this section is found guilty of, or pleads guilty to, the primary offense, but denies any previous conviction charged, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. The court shall impose sentence pursuant to subsections 1 and 2 of this section upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual criminality.

7. Nothing in this section limits the prosecution in introducing evidence of prior convictions for purposes of impeachment.

8. A certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

[1911 C&P §27; RL §6292; NCL §9976]—(NRS A 1961, 446; 1965, 250; 1967, 217, 516; 1971, 173; 1977, 360; 1981, 1647)

465.080 Unlawful use of counterfeit or unapproved chips, tokens or unlawful coins, devices; unlawful possession of devices.

1. It is unlawful for any licensee, employee or other person

to use counterfeit chips in a gambling game.

2. It is unlawful for any person, in playing or using any gambling game designed to be played with, receive or be operated by chips or tokens approved by the state gaming control board or by lawful coin of the United States of America:

(a) Knowingly to use other than chips or tokens approved by the state gaming control board or lawful coin, legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in that gambling game; or

(b) To use any device or means to violate the provisions of this chapter.

3. It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within such establishment, to have on his person or in his possession any device intended to be used to violate the provisions of this chapter.

4. It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within such establishment, to have on his person or in his possession while on the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any gambling game, drop box or any electronic or mechanical device connected thereto, or for removing money or other contents therefrom.

5. Possession of more than one of the devices described in this section permits a rebuttable inference that the possessor intended to use them for cheating.

[1:239:1951; A 1955, 13] + [2:239:1951]—(NRS A 1965, 1467; 1967, 588; 1973, 445; 1977, 475; 1979, 1477; 1981, 1293)

465.101 Detention and questioning of person suspected of violating chapter; limitation of liability; posted notice required.

1. Any licensee, or his officers, employees or agents may question any person in his establishment suspected of violating any of the provisions of this chapter. No licensee or any of his officers, employees or agents is criminally or civilly liable:

(a) On account of any such questioning; or

(b) For reporting to the state gaming control board or law enforcement authorities the person suspected of the violation.

2. Any licensee or any of his officers, employees or agents who has probable cause for believing that there has been a violation of this chapter in his establishment by any person may take that person into custody and detain him in the establishment in a reasonable manner and for a reasonable length of time. Such a taking into custody and detention does not render the licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

3. No licensee or his officers, employees or agents are entitled to the immunity from liability provided for in subsection 2 unless there is displayed in a conspicuous place in his establishment a notice in boldface type clearly legible and in substantially this form:

Any gaming licensee, or any of his officers, employees or agents who has probable cause for believing that any person has violated any provision of chapter 465 of NRS prohibiting cheating in gaming may detain that person in the establishment.

(Added to NRS by 1971, 580; A 1973, 446; 1981, 1295; 1983, 564)